IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 137 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHESHKUMAR AMBALAL PATEL - Applicant
Versus
STATE O GUJARAT & 1 - Respondents

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Appearance :
MR JD AJMERA for Applicant:
PMR. I.M. PANDYA, LD. APP for Respondent : 1,
RULE SERVED for Respondent : 2,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 19/07/2006

ORAL JUDGMENT

1. The original complainant / present petitioner has preferred this petition under Section 397 of Code of Criminal Procedure, challenging the

order dated 9/4/1997 passed by learned Addl. Sessions Judge, Surendranagar in Criminal Revision Application No. 16 of 1997, below exhibit-4, where under the Sessions Court made an order that the complainant should return the amount of Rs.2,56,900=00 to the Chotila PSO on 15/4/1997 on or before 3.00 O' clock. Thus the order impugned in the present revision is made on exhibit-4. Shri. Ajmera submits that the revision had not been decided finally then. He states that, he was orally informed that the revision filed by the respondent / accused challenging the order or learned Magistrate whereby his client / the complainant was permitted to withdraw th amount of Rs.2,56,900/- has been withdrawn. However due to communication gap he is unable to produce on record the order. At the same time he has submitted that he has not received any written communication from any quarter with regard to pendency of revision application no. 16 of 1997.

2. It deserved to be noted at this stage that learned Magistrate while permitting the petitioner to withdraw the amount of Rs.2,56,900=00 has imposed conditions upon the petitioner to furnish bond to the tune of Rs,2,60,000=00. Thus enough security is provided. More over, Shri. Ajmera submits that the petitioner/ original complainant is bound to comply with the order that may be ultimately

passed in the case pending before learned Magistrate and or before revisional court, if revision application No. 16 of 1997 is pending.

3. Shri.Pandya, learned APP submits that learned Magistrate's order produced by Shri. Ajmera shows that enough care is taken for securing the procurement of money in case any such order is made. The counsels are unable to place on record the prevailing situation either in respect of Criminal Revision Application no. 16 of 1997 or in respect of pending case before learned Magistrate wherein the order dated 6/3/1997 had been passed. In view of this the order dated 9/4/1997 does not deserve to be sustained and accordingly same is hereby quashed and set aside. However it is clarified that the amount of Rs.2,56,900=00 lying with the petitioner shall be subject to result and the final outcome in the pending proceedings pending before the court below, irrespective of the contentions of the parties in respect of ownership of the amount.

4. With this observation this revision application is disposed of. Interim relief stands vacated. Rule discharged.

/vgn [S.R. BRAHMBHATT, J]